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Situation of human rights in Myanmar

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report prepared by Paulo Sérgio Pinheiro, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, in accordance with Commission resolution 2002/67 and Economic and Social Council decision 2002/269.

* A/57/150.

** The present report is being submitted on 9 August 2002 so as to include as much updated information as possible.

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Interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar

Summary

The present report is based upon the findings of the Special Rapporteur's mission to Myanmar, undertaken in February 2002, and information received by him up to 1 July 2002.

A complex humanitarian situation continues to have an impact on the exercise of economic, social and cultural rights and the right to development in Myanmar. Poverty is widespread and the economy has continued to suffer the effects of a growing deficit, rising inflation, shortfalls in energy supplies and foreign exchange, poor education, HIV/AIDS and drug-related problems, with a greater degree of vulnerability among the poor, children and women, in particular in ethnic minority areas and zones of military operation. It is clear that real and sustainable progress in these areas cannot and will not be achieved without substantive progress in the process of national reconciliation and political transition presently under way in the country, although some economic reforms may precede political reforms. In the short run, well-targeted humanitarian assistance could alleviate the basic needs of the population, especially the most vulnerable; however, the cumulative effects of economic and social hardships can only be addressed through a process led by the Government in partnership with community-based organizations, all relevant political and ethnic groups and with the support of the international community, which in the long run should underpin the transition strategy from humanitarian aid towards sustained economic growth and the development of human resources.

Human rights violations continue to be reported, especially in areas where military operations continue. In recent years, counter-insurgency operations have reportedly affected hundreds of villages in Shan and Karen States, where armed opposition groups are suspected to be operating from bases located along the Thai-Myanmar border. Numerous villages have also reportedly been relocated in eastern Kayah State, in northern Mon State and in Tenasserim Division. Most recently, populations have been forcibly transferred in Shan State. Asylum-seekers continue to move into Thailand, a symptom of a complex internal situation which is essentially man-made and whose roots are as economic as they are political.

There can be no credible democratic political transition in Myanmar without four fundamental conditions: the inclusion of all components of society in political dialogue in a spirit of participation, mutual respect, cooperation and equity; the release of all political prisoners; the lifting of the restrictions which continue to hamper the ability of political parties and groups having concluded ceasefires with the Government to meet, discuss, exchange and peacefully conduct their legitimate activities; and the explicit discussion of political democratization that cannot take place without free elections.

The release of the General Secretary of the National League for Democracy (NLD), Daw Aung San Suu Kyi, on 6 May 2002, after 19 months of de facto house arrest, is the most notable recent development in Myanmar and has opened a new phase which the Special Rapporteur calls testing confidence-building in action. The

atmosphere surrounding her release is much better than in 1995. However, while she has been able to perform her functions as NLD leader, restrictions on NLD and other political parties reportedly continue to hamper their legitimate activities. Restrictions on the freedom of information, expression and the press have yet to be fully lifted and the remaining political prisoners have yet to be released.

In that context, the issue of reform of the system of administration of justice is crucial. The Government and civil society of Myanmar must work together to ensure that reform of the judicial institutions takes place in the context of the process of including ethnic nationalities, making advances on constitutional and electoral issues and increasing the pace and modalities of transition to democracy.

60forts. Initial areas of cooperation may involve technical assistance to assist in the implementation of the International Covenant on Economic, Social and Cultural Rights, which the Government intends to ratify; to review systematically prison conditions based on international standards for the treatment of prisoners, including as they relate to female prisoners and juveniles; to review penal legislation, particularly regarding arrest, detention, investigation and other important areas of the administration of justice; to establish a legal information resource library for professionals involved in the administration of justice, other interested officials and students; and to examine with the judiciary and police areas where cooperation is felt to be most needed, such as training of relevant professionals. To this end, the international community should start thinking about options to strengthen contributions from various actors in the context of principled engagement with key players in the country: the State Peace and Development Council, ethnic and religious leaders, NLD, other political parties and local community-based organizations. The United Nations, in particular, should begin assessing the priorities for its engagement, including through the involvement of some of the executive boards of the agencies, funds and programmes, which could eventually lead to an enhanced or reoriented United Nations presence and role in some of the most vital areas.

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I. Introduction

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar was established by the Commission in its resolution 1992/58 of 3 March 1992 and extended most recently in its resolution 2002/67 of 25 April 2002. In paragraph 8 (*a*) of the latest resolution, the Commission requested the Special Rapporteur to report to the General Assembly at its fifty-seventh session and to the Commission at its fifty-ninth session, keeping a gender perspective in mind when seeking and analysing information. The present report is based upon the findings of his mission to Myanmar, undertaken in February 2002, and information received by him up to 1 July 2002.

II. Activities of the Special Rapporteur

2. The Special Rapporteur undertook his second fact-finding mission to Myanmar from 11 to 19 February 2002. On the way to Yangon on 9 February 2002, he met in Kuala Lumpur with the Special Envoy of the Secretary-General for Myanmar. In conducting this mission, the Special Rapporteur followed the methodology and operating principles established during his first fact-finding mission (see E/CN.4/2002/45, paras. 3-6). During this visit, he received the same level of full and unhindered cooperation on the part of the Government of Myanmar, for which he expresses once again his sincere appreciation. He was able to carry out his programme in its entirety and enjoyed freedom of movement and access to private persons and others of interest.

3. While in Yangon, the Special Rapporteur met with government officials, including Lieutenant General Khin Nyunt, Secretary-1 of the State Peace and Development Council (SPDC), the Foreign Minister and his Deputy, the Home Minister, the Attorney-General and Chairman of the Bar Council, the Minister of Labour, the Director-General of the Prison Department, the Police Director-General, members of the Human Rights Committee and the National Convention Convening Commission. At the meeting with the Secretary-1, the Special Rapporteur received repeated assurances of the full cooperation of SPDC. The Secretary-1 stated that he wanted to build on the success of the previous mission and noted the need to improve human rights. He reiterated his Government's commitment to improving the well-being of the people of Myanmar and stated that the need to move forward the process of political transition, national reconciliation and development, on the basis of the ceasefires that had been concluded in most parts of the country, was the order of the day. The Special Rapporteur also met with representatives of legal parties and leaders of ethnic groups that had entered into a ceasefire with the Government. He visited the Insein Central Prison and a prison hospital in Yangon, where he had confidential interviews with a dozen prisoners. He also had meetings with Daw Aung San Suu Kyi, General Secretary of the National League for Democracy (NLD), and members of its Central Executive Committee, representatives of ethnic nationality parties, the United Nations Resident Coordinator and the country team, and representatives of the diplomatic community and international civil society organizations.

4. The Special Rapporteur visited Myitkyina (Kachin State) from 13 to 15 February 2002, when he was received by local authorities and had meetings at the state court, lawyers' association and police office. He also met with representatives of local civil society organizations, religious and community leaders and United Nations project staff. He visited the offices of two ceasefire groups (i.e. groups that have agreed to a ceasefire with the Government), police lock-up No. 1 and Myitkyina prison, where he interviewed a dozen detainees. He spent a morning in a village near Myitkyina.

5. The Special Rapporteur followed his mission to Myanmar with a six-day visit to Thailand (20-25 February 2002), during which he had meetings with the Deputy Permanent Secretaries of the Ministries of Foreign Affairs and the Interior, the Deputy Secretary-General of the Office of the National Security Council, the Permanent Secretary of the Ministry of Labour and Social Welfare, the United Nations Resident Coordinator, representatives of the Office of the United Nations High Commissioner for Refugees, the Regional Representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR), representatives of the diplomatic community and non-governmental organizations (NGOs). The Special Rapporteur's team also made field trips to Chiang Mai, Fang and Mae Sot.

6. On 18 and 19 March 2002, the Special Rapporteur visited London, where he met with members of the Foreign Office, NGOs and scholars. The Special Rapporteur also presented an oral report on his initial impressions and findings to the Commission on Human Rights on 28 March 2002, which provides a basis for the present report. Both in Geneva on that occasion and later in New York, he had meetings with representatives of the Myanmar and other Governments, NGOs and private individuals who shared their views and information on the situation of human rights in Myanmar.

III. Human rights-related developments

A. Economic, social and cultural rights and the right to development

7. A complex humanitarian situation continues to have an impact on the exercise of economic, social and cultural rights and the right to development in Myanmar. Poverty is widespread and the economy continues to show the effects of a growing budgetary deficit, rising inflation and shortages of energy supplies and foreign exchange. Among major concerns are health, food security, quality education, HIV/AIDS and drug-related problems, with a greater degree of vulnerability among the poor, children and women, in particular in ethnic minority areas and zones of military operation (see A/56/312, paras. 67-69; E/CN.4/2002/45, paras. 79-94, 108).

8. It is clear that real and sustainable progress in these areas cannot and will not be achieved without substantive progress in the process of national reconciliation and political transition presently under way in the country, although some economic reforms may precede political reforms. In the short run, well-targeted humanitarian assistance could meet the basic needs of the population, especially the most vulnerable; however, the cumulative effects of economic and social hardships can only be addressed through a process led by the Government in partnership with community-based organizations and all relevant political and ethnic groups, and with the support of the international community, which in the long run should underpin the strategy for transition from humanitarian aid towards sustained economic growth and the development of human resources.

9. During his last mission, the Special Rapporteur witnessed a successful community development initiative in Labang Rosner village near Myitkyina. For the past two and a half years, this village, along with 53 others in Kachin State with a total population of 32,000 people, has benefited from a multisectoral participatory poverty-alleviation United Nations Development Programme project. The overall national counterpart is the Ministry of Progress of Border Areas and National Races Development, but the project is run locally. At an operational cost of US$ 12,000, which went directly to the community, that village of 250 souls has been able to improve its food production, generate a surplus to be invested in further improvement of living conditions and means of subsistence, secure access to drinking water, create and maintain a safety net in the case of a food, health or other potential crisis, build a school and improve its access to medical care. Through its participatory approach, the project has successfully mobilized the villagers themselves in the shaping of the development of their community through the establishment and strengthening of local community-based self-help groups. Through these grass-roots organizations, the villagers have become involved in identifying and prioritizing their needs, identifying sustainable solutions, implementing activities, sharing benefits and monitoring and evaluating project activities. They are striving to make this project self-sustainable so as to eliminate the need for outside help.

10. In the view of the Special Rapporteur, this project is emblematic in many ways. First, this is essentially what human rights work at the grass-roots level is about. Secondly, it is a practical illustration of the concept of the right to development when it is well understood: it shows the extent to which beneficiaries, when they are allowed to become the prime actors in the development of their community, can improve their living conditions with minimal outside support. Thirdly, it is a vibrant illustration of the interrelatedness of economic, social, cultural, civil and political rights. Fourthly, it demonstrates how international humanitarian and development resources can be intelligently invested in a manner that directly benefits the people themselves through their own administration and efficient monitoring of such investments. The Special Rapporteur recommends that this exemplary project be replicated and expanded throughout Myanmar, where so many people are living at the subsistence level, and that such small-scale

grass-roots projects be linked with a national development policy to ensure the sustainability of the results across the country and not only in areas where ceasefires are in effect.

11. In this regard, the Special Rapporteur also recalls his recommendation to the Government of Myanmar to accede to the International Covenant on Economic, Social and Cultural Rights, which will open the way for constructive dialogue with the relevant treaty body and provide the opportunity to benefit from a rich depository of national experiences and policy recommendations on the ways to ensure the realization of these rights. The Special Rapporteur notes ongoing discussions, in particular in the governmental Committee on Human Rights, on the possible ratification of the Covenant and the plans to convene a national workshop in preparation for that event, and, in this regard, encourages the Government to consider requesting assistance from OHCHR.

12. Development efforts in Kachin State demonstrate that peace is a prerequisite for people to start building their lives. Following his mission in October 2001, the Special Rapporteur commended ceasefires as a significant development in this regard (see E/CN.4/2002/45, paras. 95-97). To bring him up to date on the issue, the Special Rapporteur met with 15 ceasefire groups in Yangon in February 2002 and visited the headquarters of the two ceasefire groups in Kachin State: the New Democratic Army (NDA) and the Kachin Independence Organization (KIO). Each has a separate ceasefire agreement with SPDC and all but one (with KIO) are "gentlemen's agreements". After decades of fear, insecurity and widespread violence, including many documented instances of killing, arbitrary arrest and detention, torture, and forced displacement and portering, the first dividend of the ceasefire agreements is peace and the second is some development. The extent of development work has varied from place to place and the lack thereof has allegedly been a factor in some splinter groups returning to the armed struggle (for instance in Mon State). The groups that have entered into these agreements understand them to be the first step in a political negotiation process leading to a permanent agreement reflecting the principles of mutual respect; equal status, rights and duties; and the sovereignty of the Union, all of which should be enshrined in the future constitution. In the meantime, each group retains its weapons, army and organization and cooperates with SPDC to develop the zones under the group's control.

13. Positive steps have been taken on both sides to consolidate the initial agreements, including respect for broad autonomy of the ceasefire zones, financial and economic cooperation to develop local infrastructure (roads, schools, medical facilities) and teaching of Burmese and English in public schools. It is left to each group to teach its own history, religion, culture and language to its children and to issue national identity cards to the people living in its zone so that they can travel freely throughout Myanmar. For instance, in the areas controlled by NDA, development work is based on annual plans which specify the amount of funds to be provided by the Government and NDA, respectively. The main source of NDA revenue is profits from gold mining, of which it keeps 65 per cent. All of the main roads in the NDA area are paved, 37 schools have been built (20 by NDA and 17 by the Government) and the six ethnic groups in the area live together and issue religious publications in local languages. Depending on the terms of the ceasefire agreement, some groups enjoy greater integration with the national infrastructure. The NDA, for example, has opted to form special police forces instead of an army whose salaries and rations are provided by the Ministry of Home Affairs.

14. While these are important steps, ceasefire groups have expressed concern that political discussions have not progressed and that they are excluded from the current secret talks between SPDC and NLD. Nor have they been free to engage in political activities or dialogue with other ceasefire groups. The Special Rapporteur is convinced that sustainable peace in Myanmar requires the integration of all the peoples and components of society into the political dialogue that will shape their common future. This is precisely where the pledge — and the challenge — of democratic reform starts. It is encouraging that NLD has recently restated its commitment to build "a genuine democratic Union of Burma" with the participation of the ethnic nationalities and has resolved "to strive to bring about, as soon as possible, tripartite talks which will include the ethnic nationalities in accordance with the resolutions of the United Nations General Assembly".[1] The Special Rapporteur hopes that SPDC and NLD will give further consideration to this important dimension, the ignoring of which has led to decades of conflict and may yet undermine the current progress.

15. In the meantime, the Special Rapporteur encourages international assistance actors to visit ceasefire zones and support development efforts there, especially in the fields of agriculture, education, access to safe water, income generation and health. In this regard, the pioneering work of UNDP in the remote townships of Kachin, Chin and Rakhine States should provide a useful source of inspiration. In his view, such support for development efforts is an effective way to promote the realization of all economic, social and cultural rights, with due attention given to the needs of the vulnerable segments of the population.

16. In this regard, the Special Rapporteur welcomes the recent initiatives of the governmental Committee on Human Rights aimed at raising awareness about the rights of children and women. The first international seminar on the rights of the child was held in Yangon in November 2001 in cooperation with the Centre for Humanitarian Dialogue and the International Institute for the Rights of the Child, based in Switzerland. The proceedings of the seminar have been published and there are plans to convene a follow-up seminar in 2002. In June 2002, the Government also submitted its second periodic report on the implementation of the Convention on the Rights of the Child. Preparations are under way for a workshop on the rights of women and efforts are being made to conduct other human rights awareness-raising activities. One example is a workshop on mine awareness held in February 2002 with support from the Government of Australia and the Mines Advisory Group based in the United Kingdom. In December 2001 and January 2002, human rights workshops were held in Yangon and Dawai, followed in March 2002 with similar workshops for law enforcement and military personnel. Such activities should continue.

17. Nevertheless, alleged human rights violations continue to be reported, especially in areas where military operations continue. The information on these violations, which comes from a variety of mostly independent sources, appears generally substantiated by credible evidence based on sound information collection and analysis methodology. It shows a great degree of coherence and consistency in terms of times and places. It is also fairly consistent with interviews of refugees conducted by the Special Rapporteur during his February visit to Thailand. The violations described allegedly occur in the context of the counter-insurgency policy that has been implemented for many years in zones of ethnic insurgency, aimed at destroying the armed opposition. They include forced relocation of rural populations from areas of suspected or real armed rebellion to areas under army control, thus depriving insurgents of all sources of support (combatants, food, money and intelligence). Villagers in target areas are usually given a few hours or days to pack up essential belongings and move. No compensation for lost property or material assistance is provided and those relocated have to start from scratch and survive as best they can. They are prohibited from returning to their villages and if caught are shot on sight.

18. In recent years, this policy has reportedly affected hundreds of villages in Shan and Karen States, where Shan and Karen armed opposition groups are suspected to be operating from rear bases located along the Thai-Myanmar border. Numerous villages have also reportedly been relocated in eastern Kayah State, in northern Mon State and in Tenasserim Division. Recently, populations have allegedly been forcibly transferred from north-eastern Shan State, adjacent to China, to designated areas of southern Shan State, mainly Wa farmers and insurgents and their families, as well as several hundred Lahu families and ethnic Chinese.

19. The Special Rapporteur is also concerned about reports of abuses of civilians and refugees on the part of armed opposition groups, notably the Karenni National Liberation Army, which has been accused of forced conscription of male villagers, including under age youths, levying taxes in rice and money, laying mines and booby traps on forest footpaths, detention and forced labour of refugees suspected of drug trafficking and, in some cases, killing villagers.

20. The continued flow of asylum-seekers from Myanmar to Thailand is a symptom of a complex internal situation which is essentially man-made, whose roots are as economic as they are political. The Special Rapporteur believes that, particularly in rural areas where communities have been established for centuries, no one willingly leaves one's village, relatives, friends, community and country to become a refugee or an illegal immigrant unless there are compelling reasons to do so. It is when people are confronted with no viable alternative that they reluctantly take the road to exile. All the refugees whom he met who are not politically affiliated want to return home and should be allowed to do so when their

safe and dignified return can be guaranteed by the Government of Myanmar.

B. Civil and political rights

21. The Special Rapporteur reiterates that there can be no credible democratic political transition in Myanmar without four fundamental conditions: the inclusion of all components of society in political dialogue in a spirit of participation, mutual respect, cooperation and equity; the release of all political prisoners; the lifting of the restrictions which continue to hamper the ability of political parties and ceasefire groups to meet, discuss, exchange and peacefully conduct their legitimate activities; and the explicit discussion of political democratization that cannot take place without free elections. This will open the necessary space for initiating reforms which Myanmar society direly needs in the political, legal, social and economic spheres, and which the Special Rapporteur hopes will inaugurate a new era of stability, development and prosperity in the country.

22. The release of Daw Aung San Suu Kyi on 6 May 2002, after 19 months of de facto house arrest, is the most notable recent development in Myanmar. The High Commissioner for Human Rights and the Special Rapporteur issued a joint statement on that day, joining their voices with all those who welcomed this event, which showed that the policy of principled engagement articulated by the Special Rapporteur in his statement to the Commission on Human Rights at its fifty-eighth session has been effective in supporting the best interests of the Myanmar people. They also expressed their readiness to discuss with the Government possible cooperation that would enhance the promotion and protection of human rights.

23. Daw Aung San Suu Kyi commented on that occasion that it marked the end of the confidence-building phase of secret talks between herself and SPDC that were facilitated by the Special Envoy of the Secretary-General in September 2000. In fact, her release occurred following his seventh visit to Yangon.

24. On the day of her release, SPDC issued a statement entitled "Turning of a New Page", which read:

> "First — we have released nearly 600[2] detainees in recent months and shall continue to release those who will cause no harm to the community or threaten the existing peace, stability and unity of the nation. Second — we shall continue to work together with countries ... Third — we shall recommit ourselves to allowing all of our citizens to participate freely in the life of our political process, while giving priority to national unity, peace and stability of the country ..."

25. The Special Rapporteur wishes to refer to the present juncture as a new phase of testing confidence-building in action, as substantive talks on policy issues between Daw Aung San Suu Kyi and SPDC have yet to start. Issues to be resolved through policy discussion include the unconditional release of all political prisoners (possibly through amnesty); lifting restrictions on the operation of political parties; a new constitution; the pace and modalities of the transition to democracy; the results of the 1990 elections; foreign investment and aid; and the inclusion of ethnic nationalities in the talks on policy issues. Daw Aung San Suu Kyi maintains that NLD policy will remain unchanged until such time as a substantive political dialogue is in place. This position was reiterated in the NLD statement issued on the occasion of the twelfth anniversary of the 1990 elections.

26. The atmosphere surrounding Daw Aung San Suu Kyi's release is reported to be much better than it was in 1995. So far she has been able to perform her functions as leader of NLD, including daily work in the NLD headquarters, visiting NLD offices in Yangon Division (five townships thus far), holding meetings with the diplomatic community, United Nations agencies and civil society organizations, and giving press briefings, interviews, public statements and speeches. A telephone line has been reconnected in her residence and the NLD headquarters. On 14 June 2002 she travelled outside Yangon for the first time since 1995 on a private religious visit to Karen State and from 22 June to 1 July 2002, she went to Mandalay, where she visited a number of towns and met party members. She was also able to visit a number of UNDP-supported projects in Magwe, Kyaukpadaung and Chaung-U townships. These visits were purely for her own information purposes and had no connection with her political activities.

27. These developments complement the ones mentioned by the Special Rapporteur to the Commission after his last mission, and are welcome.

28. While Daw Aung San Suu Kyi's release is reportedly unconditional, restrictions on NLD and other political parties in the peaceful exercise of their fundamental rights to assemble, travel, express their opinions and produce and communicate information continue to hamper their legitimate activities (ibid., paras. 25-29). During his mission, the Special Rapporteur visited the headquarters of the National Unity Party (NUP), a successor to the former ruling socialist party, and the Union Solidarity and Development Association and observed that there are striking contrasts between their freedom to operate, on the one hand, and the limitations imposed on them, on the other. For example, the legal Shan National League for Democracy continues to be reluctant to open offices and meet supporters out of fear for their safety.

29. At the end of May 2002, NLD announced plans to start publishing a party newsletter and applied for permission to do so. For the time being, NUP is the only political party to have its own publication. Credible transition requires the restoration of complete freedom for political parties to conduct their legitimate activities, and this will be another test of the seriousness of the Government's announced commitments to allow all citizens to participate freely in the political process and to encourage the process of political transition and national reconciliation. Significant progress in this respect will improve the atmosphere, at home and internationally, and help normalize Myanmar's relations with the international community.

30. Restrictions on the freedoms of information, expression and the press have yet to be fully lifted. International radio stations remain the only sources of uncensored information available in Burmese. Although there have been few recent examples of a more positive attitude towards foreign correspondents, strict self-censorship of journalists in Myanmar remains the norm if one is to avoid detention. So far, except for the *Myanmar Times*, a pro-Government newspaper, there has been no word in the domestic press, radio or television on the latest political developments in the country, including the talks between SPDC and NLD and the release of Daw Aung San Suu Kyi. The Special Rapporteur has sought clarification from the Government concerning at least 16 journalists who allegedly remain in prison. There are also reports of continued sanctions against publications for questionable reasons: in June 2002, the magazines *Living Color*, *Mhyar Nat Maung Mingalar* and *Kyi pwar yee* were reportedly temporarily banned for such reasons as having printed an advertisement on a page "reserved" for SPDC, printing an advertisement for a company perceived to be in conflict with the Minister of Sport, or mentioning the former name of Thailand.

31. As the Special Rapporteur has stated on numerous occasions, the release of all remaining political prisoners is an indispensable dimension of political transition. The release of all political prisoners is even more important now that confidence-building is being tested in action. They include several categories of persons. First, people have been detained merely for peacefully expressing their political opinions, such as Dr. Salai Tun Than, a senior academic who was arrested in November 2001 and is now serving a seven-year sentence in Insein prison, where the Special Rapporteur met him. Some of these prisoners have received additional sentences and punishments for having communicated human rights information to the previous Special Rapporteur or the United Nations. Second, there are prisoners who have completed their sentences but are still being held, making their detention both illegal and arbitrary. Third, there are persons who have never been charged or tried but who have been in prison for several years. Fourth, there are the old and/or sick, who should be released on humanitarian grounds. Fifth, there are persons who may have been accused of supporting violent opposition but who have not used violence themselves, as well as persons who were actually engaged in armed opposition, who have been tried by courts whose independence is questionable. A number of prisoners in any of these categories have in the past been held in solitary confinement for many years, which may have serious adverse consequences for their health. Others have been sent to prisons far away from their homes, making it difficult or impossible for their families to visit them, with the families often not being allowed to send any food, clothing or other supplies.

32. The Special Rapporteur reiterates his call for the unconditional and early release of all political prisoners. He further suggests an amnesty, or series of amnesties, in the belief that such a step would improve the situation in Myanmar in several regards (ibid., paras. 41-47). The Special Rapporteur stands ready to work closely with SPDC to that end and has provided it with a copy of a study prepared on the subject of

amnesty laws for the Subcommission on the Promotion and Protection of Human Rights in 1985. Following his mission, the Special Rapporteur wrote to SPDC on 5 March 2002, stating the foregoing concerns and submitting the names of 104 political detainees who should be immediately released: 19 elected members of Parliament, 22 persons whose continued detention is related to an alleged attempt to communicate human rights information to the United Nations, 33 prisoners held beyond the term of their sentence, 9 persons detained for several years without charge or trial and 21 humanitarian cases. The Special Rapporteur welcomes the release of 56 persons since his mission, including a number of cases previously submitted by him.

33. Since the beginning of 2002, 83 political prisoners have been released, of whom 19 were freed since the release of Daw Aung San Suu Kyi on 6 May. This brings the total number of recent releases to about 302 in the last 18 months.

34. As far as the Special Rapporteur can ascertain, none of the persons whom he met and interviewed during his missions in Myanmar has been subject to any form of harassment or reprisal. The Special Rapporteur had sought and obtained guarantees with respect to the protection of the persons cooperating with his mandate from the Myanmar authorities and he notes that they have been respected.

35. The Special Rapporteur has repeatedly requested the authorities to release all those whose terms have been extended for having communicated human rights information on prison conditions to the United Nations. To his knowledge, 30 prisoners are in this situation, including a group of 24 prisoners detained in Insein prison since 1989. In Yangon General Hospital, the Special Rapporteur met U Win Tin, aged 72, a prominent journalist and secretary of NLD who was accused of drafting the report on prison conditions sent to his predecessor. The only crime of these prisoners, as far as the Special Rapporteur knows, is to have peacefully exercised their rights to freedom of expression and information in order to improve their conditions of detention after their arrest in 1991 and to have expressed their views in relation to participation in the National Convention. Several members of the group were hooded and tortured during interrogation, deprived of food and detained for prolonged periods in very small rooms used to keep police dogs. They were sentenced to 7 to 12 additional years in prison and dispersed to several different prisons (Mytkyina, Tharawaddy, Myangyan, Myaungmya and Thayet).

36. The Special Rapporteur is not in a position to accept statements made by government sources in May 2002 that there were no more political prisoners in Myanmar. The release of political prisoners after that date would itself seem to suggest the contrary. Seventeen of the 19 detained members of Parliament (MPs) are still in prison, as are 87 women political prisoners. In addition to U Win Tin, the serious humanitarian cases include U Kyaw San (MP), U Aye Tha Aung (General Secretary of the Committee Representing the People's Parliament), Dr. Than Nyein (MP) and U Htwe Myint (Chairman of the Democracy Party), who were transferred from Yangon General Hospital to Insein Hospital between 20 May and 1 June 2002, where their health situation reportedly did not improve significantly. The Special Rapporteur cannot accept the view that all these political prisoners are common criminals. The very fact that these prisoners are held separately from common convicts clearly indicates that they are not.

37. The State Protection Act of 1975 is still used to justify continuing detention of persons who have served the maximum term of their sentences. The Special Rapporteur has identified 32 persons in this situation. He heard reports that 10 political prisoners had their sentences extended for seven years in November 2001 and, more recently, that student leader Paw U Tun (Min Ko Naing), who in 1998 had completed his 10-year sentence for participating in a pro-democracy protest, continued to be held without new charges being brought against him.

38. The Special Rapporteur has received reports about several new arrests in 2002. Two Christian ministers, Reverend Htat Gyi/That Ci and his son-in-law, Pastor Lian Za Dal (Saya Tun Lin), were arrested on 5 April 2002 at their residence in Yangon, together with eight other extended family members, for failing to file guest registration. Eight Muslims were reportedly arrested on 3 February 2002 and sentenced to seven-year imprisonment four days thereafter in Rakhine State for travelling without permission to Yangon. (Muslim travellers are allegedly also being harassed in other parts of the country, including in Karen and Mon States.)

39. During the reporting period the Special Rapporteur has been able to update his knowledge on

the situation in prisons and the treatment of prisoners, inter alia, through his visits to Myitkyina and Insein prisons in February 2002. Subsequent to visits by the International Committee of the Red Cross, some improvements were reported in certain aspects of prison life (see ibid., paras. 49-63). However, the Special Rapporteur notes that there is much room for further improvements, especially given the evident commitment of the top leadership and the willingness to cooperate with the international community in this regard.

40. Among the remaining problems which the Special Rapporteur wishes to note is the apparent lack of proper medical treatment, including a severe shortage of medicines. For instance, in Myitkyina prison, a men's block serves as a hospital ward and a medical officer from the Mytkyina General Hospital visits once a week. Sick prisoners allegedly are only transferred to hospital if they can pay for it or if they are near death. The Special Rapporteur has received allegations that on some occasions very sick prisoners would have been removed from public view ahead of visits by humanitarian organizations. Prison staff and authorities, especially the military intelligence, allegedly would interfere with health-related decisions.

41. At the time of the visit, there were about 300 women in Myitkyina prison, including pregnant women and mothers with young children. The Special Rapporteur is pleased to note that since his visit, 318 women prisoners, all of them pregnant or mothers with young children, have been released on humanitarian grounds from various detention facilities, including Myitkyina prison. In his statement of 13 March 2002, he welcomed these releases as a sign that the Government of Myanmar was addressing the issue of the most vulnerable groups in the prison population.

42. A central concern of the Special Rapporteur's mandate is the access to justice of the peoples of Myanmar. This question is at the heart of the transitional process to civilian rule. A justice system is one of the instruments at the disposal of societies to resolve disputes in a peaceful and fair manner according to acceptable rules. In every society, the development of a system of justice is an ongoing, evolving process, which requires sustained efforts, patience and determination. It requires grounding in, and guidance by, clear principles, a proper legal framework, competent institutions, educated and trained personnel and, crucially, budgetary resources, for justice is an expensive commodity. By effectively delivering justice, and being seen to do so, the justice system wins public confidence and support, and succeeds in its prime task of reducing violence in society.

43. During his second mission, the Special Rapporteur began to examine the justice system, in law and practice, from the perspective of the lawmakers, law-enforcement institutions, the judiciary and the end-users. He started collecting relevant pieces of legislation and meeting police officers, magistrates and lawyers, in the capital and elsewhere. From these initial insights, several salient features have emerged, which he will seek to describe in this first assessment. He also conducted confidential interviews in locations chosen by him with 26 detainees and former political prisoners.

44. The current legal system in Myanmar has been influenced by traditional customary law, British common law imposed during colonial rule (which forms the basis of the system) and the socialism introduced after the military takeover of 1962. A new Judiciary Law promulgated in 2000 intended to reform the justice system around several important principles, i.e. respect for the rule of the law, independence of the judiciary, presumption of innocence, right to be heard by a court and be afforded a fair and public trial by an impartial and competent court, right to a defence and to appeal, and the benefit of the doubt. The Law refers to other, more vaguely defined organizing principles, such as protecting the interests of the people, aiding in the restoration of law and order, peace and tranquillity, educating the people to understand and abide by the law and stressing the moral rehabilitation role of punishment. In the absence of a constitution,[3] the Judiciary Law clarifies to some extent the penal and civil legislation currently in force in Myanmar. It refers to the Penal Code, the Code of Criminal Procedure, the Law on Evidence and "special laws" and procedures defining and punishing offences not prescribed by these codes. These "special laws" are not specified, but could include laws enacted since the mid-nineteenth century by successive regimes to maintain law and order.[4] Many provisions in these laws need to reflect more fully the fundamental human rights to freedom of conscience, opinion, expression, assembly, association, information and movement.

45. The Judiciary Law provides for a four-level court system (township, district, division, state) crowned by

a Supreme Court with both "appellate and provisional powers". Civil law is regulated by the Code of Civil Procedure, the Evidence Act and other civil legislation. Matters dealing with succession, inheritance and marriage are regulated by Buddhist, Islamic and Hindu customary laws.

46. Despite the initial clarifications in the Judiciary Law, the Special Rapporteur noted some confusion among law enforcement and judicial officials, not to mention the public, about what laws are currently in force, to what extent, and how conflicts are to be resolved in practice.

47. The Special Rapporteur's second observation relates to the fundamental principle of the independence of the judiciary. While the concept was reintroduced in the Judiciary Law, it must be effectively respected and implemented. Every political transition always required sustained efforts to reinvigorate the notion, intellectually and in practice, particularly through the training of a new generation of legal professionals. The international community must go beyond pointing to problem areas in the administration of justice in Myanmar and demanding that the basic principles of the democratic rule of law be implemented; it should not wait to engage until the political transition is completed and should consider beginning to offer technical cooperation to improve the capacity of the existing elaborate legal system, inherited from the British and supplemented by traditional customary law, to operate fully in a future democratic setting.

48. A third feature that the Special Rapporteur has observed derives from the two preceding remarks. It relates to what appears to be a widespread subjective implementation of the law. While judicial decisions tend to conform to existing laws and procedures, an examination of the process as applied to political prisoners reveals a high degree of arbitrariness. Many, if not all, of the remaining cases of political detainees appear to be arbitrary violations of the most fundamental human rights principles and norms as well as the existing safeguards in Myanmar law to protect people against official abuse of power.

49. A detention is arbitrary in international human rights law when it violates the general principles set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Such arbitrariness constitutes an abuse of power, the victims of which are entitled to protection and redress, i.e. access to justice, fair treatment, restitution, compensation and any necessary rehabilitation assistance.

50. The Special Rapporteur has received many allegations that, in the past, many political prisoners in Myanmar had been arrested, detained, interrogated, tried, sentenced and imprisoned in an arbitrary manner. In this process, State agencies[9] other than judicial authorities would have allegedly played some part in arrest, detention and investigation — and sometimes even in sentencing. He has also received credible reports that the places where some prisoners had been detained do not appear to be police custodial facilities or facilities indicated on the official lists of prison and detention camps that were made available to him. In those facilities, persons arrested allegedly were detained incommunicado for prolonged periods while investigations continued. They would have been denied contacts with outsiders, including relatives, lawyers and medical personnel. Judicial authorities were not informed or allowed to determine the legality of the arrest and detention. The Special Rapporteur is convinced that with the decrease in the number of political arrests during the period of his mandate, such allegations will cease. He expects that with the successful conclusion of the confidence-building phase, the Government of Myanmar will make more explicit to all its agencies the need to end those alleged past practices.

51. Myanmar penal law prohibits torture, makes it a criminal offence and punishes it with imprisonment for up to seven years. It also prohibits the use of confessions and other information obtained under duress as evidence in court. While the Special Rapporteur has not been able to collect recent testimony relating to torture during his two missions to Myanmar, its widespread use for four decades by security personnel against suspected political critics or civilians and prisoners in insurgency areas has been documented beyond reasonable doubt.

52. During his last mission, the Special Rapporteur raised with senior police officers the question of the many allegations of torture made against security personnel in Myanmar. He was surprised that acts of torture by police officers were acknowledged and that in a number of cases perpetrators had been tried and

punished. Police authorities told him that one of the priorities of SPDC was to re-establish popular confidence in the police. He received annual statistical records showing disciplinary action taken since 1995 against police officers, including, he was told, for acts of torture. These records show that 3,646 policemen have been tried and imprisoned over the past seven years for misconduct or abuse of power, including torture. Thousands of others have either been dismissed, demoted or otherwise punished.

53. These are encouraging signals. If true, these developments may well be an important and commendable step towards building the rule of law in the country. Even before full electoral democracy, the discretion of State officials could be reduced and made increasingly subject to the law. The Special Rapporteur intends to pursue the dialogue with Myanmar police authorities during his next visit and explore with them avenues for enhanced international cooperation in the area of policing in order to encourage and further develop current efforts. The ratification by Myanmar of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment would be an important step and would provide a useful normative and technical framework for action and international cooperation in eliminating torture.

54. The Special Rapporteur's next observation relates to the handling of political offences. Allegedly, political trials would be conducted by regular or special courts established for that purpose, such as the one that sits in the Insein prison compound. Trials by such courts have reportedly been held mostly in camera and defence lawyers have generally not been admitted, or only at the last stage of the trial, or under restrictions that were tantamount to a denial of the right to defence. Reportedly, verdicts would be prepared in advance and read out, often without the accused being present.

55. The Special Rapporteur hopes to be able to refine and further develop his preliminary impressions as he learns more about the system of the administration of justice. As he said earlier, these are matters of central concern to his mandate, as they should be to the international community. He hopes to be able to pursue the discussions he had with members of the judiciary in Myanmar and with all other relevant authorities. He also hopes that they will be able to take his comments as a constructive contribution to their work.

56. The administration of justice is a complex whole, which involves institutional, law enforcement, judicial, professional, educational and informational aspects. Its reform will take time and sustained efforts. It will require patience, determination and resources. The Special Rapporteur welcomes the initial efforts by SPDC to set the judiciary on this path. It will eventually require a systematic review of all existing legislation that criminalizes the exercise of the most fundamental internationally recognized human rights, with a view to amending it or bringing it into conformity with both the principles stated in the Judiciary Law and international human rights standards. Allegations of abuse of power should be investigated and the persons found responsible brought to trial. Special courts should be disbanded — as were military courts several years ago. Patient and steady work is ahead of the Government and the civil society of Myanmar in order to ensure that reform of the institutions involved in the administration of justice takes place in the context of the process of political transition.

57. The Special Rapporteur is convinced that the United Nations and the international community will be ready to help and support these efforts. In this regard, he would be happy to explore with the relevant authorities, during his next mission, ways of laying the ground for United Nations cooperation. Initial areas of cooperation could involve technical assistance to assist in the implementation of the International Covenant on Economic, Social and Cultural Rights, which SPDC intends to ratify; to review systematically prison conditions based on international standards for the treatment of prisoners; to review, in close cooperation with the United Nations Children's Fund, on the basis of the Convention on the Rights of the Child, penal legislation applicable to juveniles; to examine, with United Nations partners, Myanmar's obligations under the Convention on the Elimination of All Forms of Discrimination against Women as they relate to female prisoners; to review legislation relating to arrest, detention, investigation and other important areas of the administration of justice; to establish a legal information resource library for professionals involved in the administration of justice, other interested officials and students; and to examine with the judiciary and police areas where cooperation is felt to be most needed, such as training of relevant officials.

IV. Conclusions

58. The Special Rapporteur believes that Myanmar society is at the threshold of great changes and is becoming more sensitive to the moral and practical need to move at a faster pace than heretofore towards a democratic, tolerant and peaceful future that attributes the highest value to the essential dignity of the individual.

59. In the Special Representative's view, recent meflowing on the political front has not and could not possibly bring about significant improvements in the complex human rights and humanitarian situation; this is only feasible in the context of a sustainable process of political transition and national reconciliation when tangible progress has been made in addressing policy issues. Notably, such issues include the unconditional release of all political prisoners (possibly through amnesty), lifting restrictions on the exercise of basic human rights and freedoms and on the operation of political parties, the establishment of a functioning system of the rule of law, expansion of talks to a tripartite dialogue including ethnic nationalities, making advances on constitutional and electoral issues and increasing the pace and modalities of transition to democracy.

60. The experience of political transitions in other countries suggests that the present delicate situation in Myanmar, presenting new prospects for reconciliation and democratization, needs to be handled with great care and generosity on the part of all who wish the people of Myanmar well. The Special Rapporteur is of the view that the international community should start thinking about options to strengthen contributions from its various actors in the context of principled engagement with key players in the country: SPDC; ethnic and religious leaders; NLD; other political parties; and local community-based organizations. At the moment, it is essential to discourage international public opinion from accepting simplistic paradigms and viewing the complex process as a struggle between good and evil. In the present international struggle against terrorism, there is a tendency on the part of some nations to put human rights, the right to development and democracy in the back seat. The move from the confidence-building phase to the beginning of a dialogue on substantive political and constitutional issues in Myanmar must be supported by all means available.

61. **The United Nations should, in particular, begin assessing the priorities for its engagement, including through the involvement of the executive boards of some of its agencies, funds and programmes, which could eventually lead to an enhanced or reoriented United Nations presence and role in some of the areas that could facilitate the transition process. For the time being, in spite of limited progress in certain areas, humanitarian assistance programmes continue to be affected by difficult operating conditions that limit and constrain their implementation, accountability, verification and access to the most vulnerable. The Government should make every effort to enable humanitarian assistance to be more effective in meeting needs through the involvement and representation of all stakeholders so that priorities can be ordered and agreed.**

Notes

[1] NLD statement issued on 27 May 2002, on the occasion of the twelfth anniversary of the 1990 elections. Five ethnic nationality parties representing the Shan, Mon, Zomi (Chin), Karen and Arakanese ethnic minorities also issued a statement in mid-May 2002 calling for tripartite talks.

[2] This includes common criminals.

[3] A National Convention was established by the military in 1993 to define the principles that would inform a new constitution, but political differences suspended its proceedings in 1996. The results of the proceedings, which took place from 1993 to 1996, are published by SPDC in the booklet "The basic principles and detailed basic principles laid down by the National Convention plenary sessions up to 30 March 1996", Yangon, undated.

[4] They may include the Emergency Provisions Act (1950), the Law to Safeguard the State against the Danger of Subversive Elements (1975), the Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbances and Oppositions (1996), the Law on Registration of Printers and Publishers (1962), the Press (Emergency Powers) Act (1931), the Unlawful Association Act (1908), the Public Order (Preservation) Act (1947), the Law Relating to the Forming of Organization (1988), the Television and Video Law (1996), the Arms Act (1878), the Public Property Protection Act (1947) and the Common Property Protection Law (1963).

[5] Such as Military Intelligence and the Special Branch, which answers to the Police Directorate.